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Forty-ninth session
Item 71 of the provisional agenda*
MAINTENANCE OF INTERNATIONAL SECURITY

SECURITY COUNCIL
Forty-ninth year

Letter dated 20 September 1994 from the Chargé d'affaires a.i. of the Permanent Mission of Yugoslavia to the United Nations addressed to the Secretary-General

In connection with the letter dated 14 September 1994 from the Permanent Representative of Croatia to the United Nations addressed to you (A/49/383-S/1994/1052), upon the instructions of my Government, I have the honour to state the following.

The Government of the Federal Republic of Yugoslavia strongly rejects the absurd allegations contained in the above-mentioned letter. Such blatant fabrications are aimed solely at discrediting the constructive role and contribution of the Federal Republic of Yugoslavia to the peaceful solution of the crisis in the former Yugoslavia, which are widely acknowledged by the international community.

In doing so, Croatia's authorities continue with the policy of pursuing a campaign of slander and falsehoods against the Federal Republic of Yugoslavia that may satisfy certain internal political interests but cannot in any contribute to an overall peaceful settlement.

The Federal Republic of Yugoslavia expects the Republic of Croatia to honour its expressed readiness to normalize its relations with the Federal Republic of Yugoslavia, which, for its part, is investing great efforts towards that end.

* A/49/150.

I should be grateful if you would have the present letter circulated as an official document of the General Assembly, under item 71 of the provisional agenda, and of the Security Council.

(Signed) Dragomir DJOKIĆ
Ambassador
Chargé d'affaires a.i.

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Forty-ninth session
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RIGHT OF PEOPLES TO SELF DETERMINATION

Report of the Secretary-General

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* A/49/150.

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I. INTRODUCTION

1. In its resolution 48/94 of 20 December 1993, the General Assembly, inter alia, called upon all States to implement fully and faithfully all the relevant resolutions of the United Nations regarding the exercise of the right to self-determination and independence by peoples under colonial and foreign domination; reaffirmed the legitimacy of the struggle of peoples for independence, territorial integrity, national unity and liberation from colonial domination, apartheid and foreign occupation, in all its forms and by all available means; reaffirmed that the practice of using mercenaries against sovereign States and national liberation movements constituted a criminal act, and called upon the Governments of all countries to enact legislation declaring the recruitment, financing and training of mercenaries in their territories and the transit of mercenaries through their territories to be punishable offences and prohibiting their nationals from serving as mercenaries, and to report on such legislation to the Secretary-General; expressed its appreciation for the material and other forms of assistance that peoples under colonial rule continued to receive from Governments, organizations of the United Nations system and other intergovernmental organizations, and called for a substantial increase in that assistance; and decided to consider the question at its forty-ninth session under the item entitled "Right of peoples to self-determination".

2. In its resolution 48/93 of 20 December 1993, the General Assembly, inter alia, reaffirmed that the universal realization of the right of all peoples, including those under colonial, foreign and alien domination, to self-determination was a fundamental condition for the effective guarantee and observance of human rights and for the preservation and promotion of such rights; requested the Commission on Human Rights to continue to give special attention to the violation of human rights, especially the right to self-determination, resulting from foreign military intervention, aggression or occupation; and requested the Secretary-General to report on the question to it at its forty-ninth session under the item entitled "Right of peoples to self-determination".

3. In its resolution 48/92, also of 20 December 1993, the General Assembly, inter alia, urged all States to take the necessary steps and to exercise the utmost vigilance against the menace posed by the activities of mercenaries and to ensure, by both administrative and legislative measures, that their territory and other territories under their control, as well as their nationals, were not used for the recruitment, assembly, financing, training and transit of mercenaries or for the planning of activities designed to destabilize or overthrow the Government of any State and to fight the national liberation movements struggling against racism, apartheid, colonial domination and foreign intervention or occupation.

4. Accordingly, the Secretary-General, in a note verbale dated 25 April 1994, invited all States to communicate to him any relevant information they might wish to submit for inclusion in the report he was requested to prepare pursuant to paragraph 6 of resolution 48/93 and paragraph 24 of resolution 48/94.

5. The present report contains a summary of action taken by the Commission on Human Rights at its fiftieth session and by the Economic and Social Council at its substantive session of 1994 and replies received from Governments as at 1 September 1994. Any additional replies will be reproduced in an addendum to the present report.

II. SUMMARY OF ACTION TAKEN BY THE COMMISSION ON HUMAN RIGHTS AT ITS FIFTIETH SESSION AND BY THE ECONOMIC AND SOCIAL COUNCIL AT ITS SUBSTANTIVE SESSION OF 1994

6. At its fiftieth session, held from 31 January to 11 March 1994, the Commission on Human Rights considered the item entitled "The right of peoples to self-determination and its application to peoples under colonial or alien domination or foreign occupation" at its 4th to 8th and 30th meetings. The debates are reported in the relevant summary records (E/CN.4/1994/SR.4-8 and 30). The Commission adopted four resolutions, which related to the Middle East peace process (resolution 1994/4), the situation in occupied Palestine (resolution 1994/5), the question of Western Sahara (resolution 1994/6 and the use of mercenaries as a means of impeding the exercise of the right of peoples to self-determination (resolution 1994/7).

7. No action was taken by the Economic and Social Council at its substantive session of 1994 with regard to the question of the right of peoples to self-determination.

III. REPLIES RECEIVED FROM GOVERNMENTS

AZERBAIJAN*

[Original: Russian]

[20 June 1994]

1. The Azerbaijani Republic, which has regained its independence and is now a full member of the international community, unconditionally declares and confirms its commitment to the provisions of the Charter of the United Nations, the International Covenants on Human Rights and the Declaration on the Granting of Independence to Colonial Countries and Peoples (General Assembly resolution 1514 (XV) of 14 December 1960), which reflect the need for effective guarantees with regard to the observance of human rights and the universal realization of the right of peoples to self-determination.

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* The full text of the reply is available for consultation in the files of the Secretariat.

2. The progressive exercise by the Azerbaijani people of the right to self-determination has enabled it to achieve sovereignty and independence within the Azerbaijani Republic and to realize its inalienable right freely to determine its own future.

3. At the same time we share the concern of the world community at continuing acts of foreign military intervention and occupation, which threaten the complete realization of the right of sovereign peoples and States to self-determination.

4. We fully share the growing concern of the international community at the unjustifiable and, of late, widespread tendency to interpret the right to self-determination as the right of any ethnic or national community to establish its own state structures.

5. It is worth noting that the Charter of the United Nations eloquently stresses that:

> "All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the Purposes of the United Nations."

Thus, in the United Nations Charter the right to self-determination is treated as a principle which provides no basis for infringing the principle of the independence and territorial integrity of States.

6. In this connection, we wish to express our total solidarity with Secretary-General Boutros Boutros-Ghali's fundamental assessment of the right to self-determination:

> "Yet if every ethnic, religious, or linguistic group claimed statehood there would be no limit to fragmentation, and peace, security and economic well-being for all would become ever-more difficult to achieve
>
> ...
>
> "The sovereignty, territorial integrity and independence of States within the established international system, both of great value and importance, must not be permitted to work against each other in the period ahead."

7. Accordingly, the provisions of resolution 48/93 concerning the responsibility of States for acts of military intervention, aggression and occupation accompanied by mass violations of human rights, inhuman treatment, and repression and discrimination directed against any people in the pursuit of expansionist objectives must not remain merely an appeal.

8. The most important thing, therefore is to develop and implement effective international legal measures and efficient mechanisms for preventing and avoiding bloody wars through a careful approach to each individual demand for self-determination, which in many instances is a kind of propaganda cover for aggression.

CROATIA

[Original: English]

[1 June 1994]

1. The Government of the Republic of Croatia has initiated the procedure for accession to the Convention against the Recruitment, Use, Financing and Training of Mercenaries, of 4 December 1989.

2. By virtue of succession, the Republic of Croatia has assumed responsibility as a party to the Geneva Convention on the Protection of Victims of War (1949) and Additional Protocols I and II (1977) effective from 8 October 1991, the date when the Republic of Croatia severed all constitutional and legal connections with the Socialist Federal Republic of Yugoslavia.

3. On the basis of the notification of succession of the Republic of Croatia and in accordance with article 134 of the Constitution of the Republic of Croatia, the Geneva Conventions of 1949 and Additional Protocols of 1977 became part of the domestic legislation of Croatia. This is a consequence of article 134 of the Constitution of the Republic of Croatia, which provides that international agreements concluded and ratified in accordance with the Constitution and made public shall be part of the Republic's internal legal order and shall in terms of legal effect be above the law. The legal effect of article 134 is that the provisions of the Additional Protocol I to the Geneva Conventions of 1949 can be invoked before and directly enforced by the courts. Moreover, in the event of a conflict between domestic and international law, the latter shall prevail.

ETHIOPIA

[Original: English]

[20 June 1994]

Ethiopia strongly condemns the use of mercenaries against any objectives and it has never resorted to such a criminal act. As enshrined in the Transitional Period Charter, the Transitional Government of Ethiopia conducts its foreign relations "on the basis of the principles of respect for the sovereignty and equality of States and non-interference in internal affairs as well as the promotion of mutual interests".

IRAQ

[Original: Arabic]

[30 May 1994]

The Government of the Republic of Iraq, while stating that the domestic laws and legislation in force in Iraq do not regulate the question of the

recruitment and financing of mercenaries or their transit through its territory, wishes to reaffirm its position with regard to those practices. In fact, it believes that the authorities of any State who organize, finance and encourage mercenary activities in their territory and turn their country into a base for the purpose of accommodating and training armed groups or encouraging their activities against the territory of another State with a view to engagement in acts prejudicial to the security and stability of that State pose a threat to international peace and security and violate the freedom and sovereignty of the target State.

NEPAL

[Original: English]

[26 July 1994]

Legislation concerning the practice of using mercenaries against sovereign States does not exist in Nepal, and matters relating to persons recruited in Nepal for the Indian and British armies are dealt with by the existing historic bilateral treaties.

PHILIPPINES

[Original: English]

[12 August 1994]

1. The Government of the Philippines is not aware of any activities of mercenaries within its territory or outside, nor is it aware of the recruitment, financing or training of the same. If there be such, the Government would be the first to condemn such activities as they violate national sovereignty and territorial integrity.

2. The Philippines is also not aware of any activities of mercenaries in the territory of another country that may impair the sovereignty of the Philippines. It will never tolerate such, as they constitute a violation of international law, particularly the provisions of the Charter of the United Nations which prohibits interference or intervention in the affairs of another State.

3. Furthermore, the recruitment and use of mercenaries as a means of violating the sovereignty of other States constitutes or is tantamount to inciting to war or giving motives for reprisals as defined and penalized under article 118 of the Philippine Revised Penal Code.

4. It is not and never will be a policy of the Government of the Philippines to resort to the use of mercenaries as a means of violating human rights. The Government's commitment to protect the rights of every individual is enshrined in the 1987 Philippine Constitution in three of its provisions, namely:

(a) Article II, section 11 (as a state policy): "The State values the dignity of every human person and guarantees full respect for human rights";

(b) Article III, the Bill of Rights guarantees the basic civil, economic, political, social and cultural rights of citizens within Philippine territory, including the rights to life, liberty, security and privacy of individuals and families;

(c) Article XIII, the chapter on social justice and human rights further strengthens the same principles.

5. The Philippines' vision to realize people's rights is evident in the Philippines' ratification of two instruments: the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, which now form part of the Philippine legal system.

6. Finally, the Philippines would like to recommend the inclusion in the above General Assembly resolutions of the use of terrorists (other than mercenaries), who, in pursuance of their ideological and religious beliefs, carry out activities that constitute a violation of United Nations principles.

SAUDI ARABIA

[Original: English]

[30 May 1994]

Saudi Arabia has a positive stand with regard to the two General Assembly resolutions (48/93 and 48/94 of 20 December 1993) as far as they are in accordance with Saudi Arabia's national legislation.

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RIGHT OF PEOPLES TO SELF-DETERMINATION

Report of the Secretary-General

Addendum

III. REPLIES RECEIVED FROM GOVERNMENTS

BELARUS

[Original: Russian]

[26 September 1994]

1. At present, there is no provision in Belarus for criminal responsibility for the recruitment, financing and training of mercenaries.

2. The draft of the new criminal code of Belarus, adopted in first reading by the Supreme Council of Belarus, provides for criminal responsibility for the recruitment, training, financing and utilization of mercenaries for military action against another State or for opposing the lawful implementation of the right of peoples to self-determination, which is recognized by international law.

3. There is also provision for criminal responsibility in respect of mercenarism, which is defined as "participation in armed conflicts and military action in the territory of another State by a person acting for purposes of material compensation or private gain without the authorization of the State of which he is a national or permanent resident".

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